

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2018-2-E

IN RE: ANNUAL REVIEW OF BASE RATES FOR FUEL COSTS FOR SOUTH CAROLINA ELECTRIC & GAS COMPANY))))))	PETITION FOR REHEARING AND/OR RECONSIDERATION
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Introduction

Pursuant to S.C. Code § 58-27-2150 and 10 S.C. Code Ann. Regs. 103-825, and applicable South Carolina law, the South Carolina Office of Regulatory Staff (“ORS”) hereby respectfully petitions the Public Service Commission of South Carolina (“Commission”) to rehear or reconsider its findings and conclusions in Order No. 2018-322(A) (“Order”). The Order was served on ORS on May 2, 2018.¹

Specifically, ORS petitions the Commission for a rehearing or reconsideration of the Commission’s determination regarding South Carolina Electric & Gas Company’s (“SCE&G”) avoided capacity cost calculation and rates and the obligation of SCE&G to provide copies of its monthly fuel recovery reports currently filed with the Commission and ORS and Quarterly Forecasts.²

¹ The Commission issued an Order on April 30, 2018; however, the Commission amended that order and issued its final Order on May 2, 2018.

² ORS does not Petition the Commission for rehearing or reconsideration on any issue other than those that relate to the Commission’s Order regarding the value of avoided capacity cost and fuel recovery reports and only discusses the brevity of time in annual fuel proceedings to bring the matter before the Commission’s attention for subsequent proceedings.

ORS respectfully submits the Commission's Order erred by not considering a proposal set forth by ORS witness Horii, by placing the burden on ORS and intervenors to determine an alternative avoided capacity cost rate, and by omitting certain uncontested matters. For these reasons, ORS requests the Commission reconsider its Order regarding avoided capacity costs, utilize the recommendation made by ORS witness Horii, and require SCE&G to file certain monthly and quarterly reports.

Applicable Law

Pursuant to S.C. Code Ann. § 58-27-2150, a party may apply to the Commission for a rehearing in respect to any matter determined in the proceeding. "The purpose of a petition for rehearing and/or reconsideration is to allow the Commission the discretion to rehear and/or reexamine the merits of issued orders pursuant to legal or factual questions raised about those orders by parties in interest, prior to a possible appeal." In re: South Carolina Electric & Gas Company, Order No. 2013-05 (Feb. 14, 2013). S.C. Code Ann. Regs. § 103-825(A)(4) prescribes the content of a petition for rehearing, which must include: "(a) The factual and legal issues forming the basis for the petition; (b) The alleged error or errors in the Commission order; [and] (c) The statutory provision or other authority upon which the petition is based."

The South Carolina Supreme Court employs a deferential standard of review when reviewing a Commission decision and will affirm that decision when substantial evidence supports it.³ Because Commission findings are presumptively correct, the party challenging a Commission order bears the burden of convincingly proving that the decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence on the whole record.⁴ Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable

³ See *Porter v. SC Public Service Com'n*, 333 S.C. 12, 20 (1998).

⁴ *Id.*

mind would accept to support an administrative agency's action.⁵ This deferential standard of review does not mean, however, that the Court will accept an administrative agency's decision at face value without requiring the agency to explain its reasoning.⁶ The Commission must fully document its findings of fact and base its decision on reliable, probative, and substantial evidence on the whole record.⁷ It must make findings which are sufficiently detailed to enable the Court to determine whether the findings are supported by the evidence and whether the law has been applied properly to those findings.⁸ Regarding factual findings, the Supreme Court recognizes that the Commission is designated an expert to regulate the rates and services of public utilities in South Carolina, and as a result, the Commission has a heightened duty to make "explicit findings of fact which allow meaningful appellate review of these complex issues."⁹

Pursuant to the *Utils. Servs. Of S.C. v. S.C. Office of Regulatory Staff*, a Utility is

...entitled to a presumption that its expenditures were reasonable and incurred in good faith, and therefore, a showing that its expenses had increased since its last rate case *could* satisfy its burden of proof. Nevertheless, the presumption in a utility's favor clearly does not foreclose scrutiny and a challenge. In those circumstances, the burden remains on the utility to demonstrate the reasonableness of its costs. ... if an investigation initiated by ORS...yields evidence that overcomes the presumption of reasonableness, a utility must further substantiate its claimed expenditures.¹⁰

Additionally, Commission Order No. 2018-68 states, "[the Commission] cannot presume that the expenses a utility proposes to recover in its rates and charges are legitimate if they cannot be subjected to the scrutiny of an audit or examination."¹¹

⁵ *Id.*

⁶ *Id.* at 21.

⁷ *Id.*

⁸ *Id.*

⁹ *Seabrook Island Property Owners Ass'n v. South Carolina Public Service Com'n*, 401 S.E.2d 672, at 674; 303 S.C. 493, at 497.

¹⁰ *Utils. Servs. Of S.C. v. S.C. Office of Regulatory Staff*, 708 S.E.2d 755, at 762-763, 392 S.C. 96 at 109-110.

¹¹ Commission Order No. 2018-68, citing *Porter v. SCPSC*, 333 S.C. 12, 507 S.E. 2d 328 (1998).

According to S.C. Code Ann. § 58-27-865 (B),

[t]he commission shall direct each electrical utility which incurs fuel cost for the sale of electricity to submit to the commission and to the Office of Regulatory Staff, within such time and in such form as the commission may designate, its estimates of fuel costs for the next twelve months. The commission may hold a public hearing at any time between the twelve-month reviews to determine whether an increase or decrease in the base rate amount designed to recover fuel cost should be granted. Upon conducting public hearings in accordance with law, the commission shall direct each company to place in effect in its base rate an amount designed to recover, during the succeeding twelve months, the fuel costs determined by the commission to be appropriate for that period, adjusted for the over-recovery or under-recovery from the preceding twelve-month period.

Finally, when discussing the S.C. Code Ann. § 58-27-865, the General Assembly made the following findings, S.C. Code Ann. § 58-27-865 provides “a means for electric utilities to make routine, annual adjustments in the amount of fuel cost recovered from customers,” and “58-27-865 has furthered the public interest by allowing the recovery of variable and incremental power supply costs on an accurate, timely, and efficient basis.”¹²

Arguments

1. Annual Fuel Proceedings are not the Appropriate Forum for Contesting Perceived Methodological Changes to Calculating Avoided Capacity Cost

The parties in this proceeding held differing opinions regarding whether the Company had proposed a methodological change to its avoided capacity cost calculation. For instance, while Dr. Lynch states SCE&G is using the Difference in Revenue Requirement (“DRR”) methodology, which has been previously approved and used, SCE&G filed a Motion to Dismiss in which it states, “...the Company believes that the previously approved methodology is no longer appropriate and that changes to the methodology are warranted and needed.”¹³ Furthermore, the Southern Alliance for Clean Energy/South Carolina Coastal Conservation League (“SACE/CCL”) witness Glick

¹² See Editor’s Notes (1) and (2) to S.C. Code Ann. §58-27-865.

¹³ See footnote p. 6, SCE&G Motion to Dismiss, filed on April 2, 2018, in Docket No. 2017-2-E, regarding the Petition for an Order Requiring SCE&G to Comply with Commission Order No. 2018-55, filed by SACE/CCL.

stated that the Company did not use the methodology approved by the Commission in Docket No. 2017-2-E.¹⁴ Specifically, witness Glick stated that SCE&G's new methodology consisted of the Company simply asserting that because solar photovoltaic doesn't typically generate during winter peaking hours, it has no capacity value.¹⁵ Witness Horii testified that SCE&G's new manner of calculating avoided capacity costs represented a "substantial change from the methodology and inputs used by SCE&G to calculate prior PR-1 and PR-2 rates...."¹⁶

Solar Business Alliance ("SBA") Witness Johnson testified regarding the brevity of this proceeding when he stated, "[t]his fuel proceeding is being conducted on a highly expedited schedule which does not provide enough time to investigate or even discuss all of these issues raised by SCE&G's filings in complete detail. And in light of this schedule it would be highly inappropriate to give the Company the benefit of the doubt concerning these issues."¹⁷

The dispute over SCE&G's methodology and the drastic change from the past year's fueled a contentious hearing that took nearly two full days to complete.¹⁸ Witnesses from all over country testified to address a dispute that did not revolve around the recovery of fuel costs, but revolved around the methodology used to determine avoided costs.¹⁹ SCE&G's dramatic change only served to complicate a relatively brief statutory fuel proceeding created by the General Assembly in order to provide an efficient avenue by which utilities could recover fuel expenses. The annual fuel proceeding has strict time limits and multiple witnesses testified as to the disadvantage and

¹⁴ Tr. P. __, l. __, Glick Direct p. 7, l. 14, Tr. P. __, l. __, Horii Direct p. 21, ll. 7-8.

¹⁵ Tr. P. __, l. __, Glick Direct p. 7, ll. 17-26.

¹⁶ Tr. P. __, l. __, Horii Direct p. 21, ll. 7-8.

¹⁷ Tr. P. __, l. __, Johnson Direct p. 88, ll. 10-13.

¹⁸ Both Duke Energy Carolinas, LLC and Duke Energy Progress, LLC update the avoided cost methodology outside of the annual fuel proceeding.

¹⁹ ORS recognizes that avoided costs under PURPA are fuel costs and must be recovered annually; however, while S.C. Code Ann. § 58-27-865 requires fuel costs be recovered annually, it does not require the methodology used to determine avoided costs to be altered annually.

problems that these parameters created when combined with SCE&G's proposed avoided capacity cost change.²⁰

Furthermore, SCE&G should not have the latitude to dictate the parameters of the fuel proceedings in a manner not contemplated by the fuel recovery statute. SCE&G failed to cooperate by providing complete and reliable data in a timely manner, and therefore, had the ability to dictate the extent to which other parties could present their cases. Because SCE&G was permitted to introduce whole-sale changes to the way in which it calculated the avoided capacity cost value, SCE&G was essentially given free rein to dictate much of the proceeding.

The General Assembly intended for the annual fuel proceedings to be utilized to allow an efficient flow through and recovery of fuel expenses and not to handle methodological changes to contentious issues. The fuel recovery statute is not designed for, and does not contemplate, lengthy and litigious issues such as those that occurred in this proceeding. For these reasons, it is inappropriate to proceed with the evaluation of the avoided cost methodology in annual fuel recovery proceedings. Therefore, on a prospective basis, ORS would request that any proposed change to calculation of avoided costs be litigated in a separate docket and not the annual fuel proceeding.

2. SCE&G Failed to Prove its Avoided Capacity Costs are Zero and the ORS and Intervenor Proposed Alternatives to the Company's Avoided Capacity Cost

The Commission's Order erred when it accepted SCE&G's proposed avoided capacity cost of zero and cited that no party provided a viable alternative proposal or an alternative estimate of SCE&G's avoided capacity cost. At the hearing, ORS witness Horii recommended that the PR-2 capacity value be set at 19.5% of the avoided cost per kW from a 100 MW change to SCE&G's base resource plan that excludes any non-committed future resources and reflects any planned

²⁰ See Horii Direct, p. 22, ll. 2-6.

plant retirements of firm capacity.²¹ Because of the lack of an avoided capacity cost calculation and data provided by SCE&G in this Docket, Mr. Horii was unable to produce an independent estimate of avoided capacity costs for a 100 MW change in supply.²² Therefore, he recommended that SCE&G be required to provide an estimate of long-run avoided capacity cost and the calculation for the long-run avoided capacity costs.²³ According to witness Horii, SCE&G bases its assertion of zero avoided capacity cost for solar projects on the premise that SCE&G is constrained by winter capacity needs, and unaided by summer capacity reductions.²⁴ This is a substantial change from the methodology and inputs used by SCE&G to calculate prior PR-1 and PR-2 rates, and relies upon assumptions and studies conducted in the 2018 Integrated Resource Plan that have not been fully reviewed, vetted and/or approved by the Commission.²⁵ Additionally, SBA witness Johnson developed estimates of the Company's avoided capacity costs.²⁶

Witness Johnson, concurred with witnesses Horii and Glick in stating that the Company's proposed avoided capacity cost of zero was inappropriate.²⁷

Company witness Lynch took two seemingly contradictory positions regarding the Company's avoided capacity cost. According to his pre-filed testimony, witness Lynch testified that he used the DRR method to calculate the avoided capacity cost.²⁸ According to Dr. Lynch, the DRR method requires calculating the revenue requirements between a base case and a change case.²⁹ Dr. Lynch further testified that the DRR method is the only way he knows how to calculate

²¹ Tr. P. __, l. __, Horii Direct, p. 22, ll. 15-23.

²² Tr. P. __, l. __, Horii Direct, p. 22, ll. 2-6, Horii Surrebuttal, p. 2, ll. 6-7.

²³ Tr. P. __, l. __, Horii Direct, p. 22, ll. 6-8.

²⁴ Tr. P. __, l. __, Horii Direct p. 21, ll. 5-10.

²⁵ Tr. P. __, l. __, Horii Direct p. 21, ll. 7-10.

²⁶ Tr. P. __, l. __, Johnson Direct p. 120, l. 13.

²⁷ Tr. P. __, l. __, Johnson Direct p. 121, ll. 6-8.

²⁸ Tr. P. __, l. __, Lynch Direct, p. 13, ll. 16-19.

²⁹ Tr. P. __, l. __, Lynch Direct, p. 4, ll. 17-19.

avoided costs.³⁰ However, at the hearing Dr. Lynch testified that he did not perform an avoided capacity cost calculation using a “around-the-clock” resource or using a 24-hour 100-megawatt profile,³¹ which in year’s past were used to determine the avoided cost. Rather, Dr. Lynch made the conclusory statement that because 100 MWs of solar has no effect on the resource plan, adding additional blocks of 100 MW of solar does not affect the Company’s future capacity and, therefore, the avoided capacity costs are zero.³² According to Dr. Lynch, SCE&G “normally” would calculate its avoided capacity costs by taking the difference in avoidable costs between a base resource plan and a change case; however, SCE&G does not believe there will be enough capacity to affect its resource plan, and therefore, avoided capacity costs for PR-1 are zero.³³ SCE&G did not perform a calculation. Dr. Lynch also testified that pursuant to a study performed by the Company, “on more than 80% of the days during the winter months...solar has no effect on SCE&G’s daily peak demand.”³⁴ Furthermore, witness Lynch testified that running a new calculation for avoided capacity cost calculation is not labor-intensive.³⁵

The Commission’s Order erred by not demonstrating that it gave consideration to Mr. Horii’s primary position regarding avoided capacity costs.³⁶ ORS did not recommend as first course of action that the Commission require SCE&G utilize the Commission’s previously approved avoided capacity cost rate going forward. Due to the Company’s lack of cooperation, ORS was unable to independently produce its own recommended avoided capacity cost. However, ORS witness Horii took an objectively fair approach and outlined a methodology by which,

³⁰ Tr. P. __, l. __, E-19, ll. 1-3.

³¹ Tr. P. __, l. __, E-10, beginning l. 18.

³² Tr. P. __, l. __, Lynch Direct p. 14, l. 1.

³³ Tr. P. __, l. __, Lynch Direct p. 22, l. 3-8.

³⁴ Tr. P. __, l. __, Lynch Direct p. 14, l. 19-22.

³⁵ Tr. P. __, l. __, E-33 ll. 18-21.

³⁶ The Commission found SCE&G’s proposal reasonable at this time, “in the absence of a viable alternative proposal being presented by any other party.” Order p. 15.

pursuant to Commission order, SCE&G could be required to calculate a more accurate avoided capacity cost. Furthermore, witness Lynch testified that, in perhaps nearly as much as one out of every five days during the winter, solar impacts the Company's winter daily peak demand. SCE&G's valuation of avoided capacity cost at zero appears to be based on supposition rather than calculations and data. Rather than perform calculations and prove that the avoided capacity cost is in fact zero, SCE&G states that solar has no impact on the Company's future capacity and asks ORS, the intervenors, and the Commission to trust it. ORS scrutinized SCE&G's avoided capacity cost and SCE&G did not prove that its avoided capacity cost was zero. ORS' middle ground approach recommends a reasonable alternative to SCE&G's extreme position, which substantially differs from the positions taken by it in previous years. Using ORS' recommendation, SCE&G could produce an accurate reflection of the avoided capacity cost, an expense for which ratepayers will pay, in relatively short order. In view of the substantial evidence on the whole record it is clear that the weight of evidence indicates that SCE&G did not prove that its avoided capacity cost is zero and both ORS and intervenors challenged SCE&G's assertion. A finding that the avoided capacity cost is zero, despite the substantial weight of evidence stating otherwise, is arbitrary and capricious. Therefore, ORS respectfully requests that the Commission adopt the approach put forth by ORS witness Horii.

3. The Commission's Order Erred when it Shifted the Burden to provide Alternative Avoided Capacity Cost Values onto ORS and the Intervenors

The Commission erred when it placed the burden on ORS and the intervenors to provide an alternative to SCE&G's proposed avoided capacity cost. The Commission's Order states that because there is no "viable alternative proposal presented by any other party," SCE&G's avoided

capacity cost proposal is reasonable.³⁷ Additionally, “[t]he Commission further reiterates that no other party presented an alternative estimate of SCE&G’s avoided capacity cost.” While SCE&G’s proposals are entitled to a presumption of reasonableness, ORS challenged the value of SCE&G’s avoided capacity cost. Therefore, SCE&G had the burden to prove why zero is appropriate. SCE&G’s proposed change to avoided capacity cost is dramatic. As such, it should be reviewed carefully and scrutinized for accuracy. Once SCE&G was challenged regarding its avoided capacity cost rate, rather than present its calculations proving why the avoided capacity cost was zero, it simply made conclusory statements. Dr. Lynch acknowledged that he did not calculate the avoided capacity cost value.³⁸ SCE&G either could not, or would not, provide calculations supporting its proposal that its avoided capacity costs were zero. Therefore, the Commission’s Order erred³⁹ when it shifted the burden onto ORS and required ORS to provide an alternative to SCE&G’s supposition.⁴⁰

Notwithstanding the above, as mentioned in testimony⁴¹ and earlier in this Petition, ORS did provide a viable alternative method to determining an appropriate avoided capacity cost. The record gives the Commission a viable alternative such that SCE&G could have provided the calculations and resulting accurate avoided capacity cost. Therefore, ORS requests that the Commission adopt ORS’ recommendation.

4. The Company Agreed to Provide the Parties with Monthly *and* Quarterly Reports

At the hearing, SCE&G witness Rooks agreed on behalf of SCE&G to provide the parties with copies of the monthly fuel recovery reports currently filed with the Commission and ORS

³⁷ “The Commission finds that SCE&G’s proposal to set avoided capacity costs for its PR-1 and PR-2 rates at zero is reasonable at this time, in the absence of a viable alternative proposal being presented by any other party.”

³⁸ Tr. P. __, l. __E-10, beginning l. 18.

³⁹ *Utils. Servs. Of S.C. v. S.C. Office of Regulatory Staff*, 708 S.E.2d 755, at 762-763, 392 S.C. 96 at 109-110.

⁴⁰ While ORS argues that the shifting of burden is an error of law, it also acknowledges that it *did* provide an alternative to SCE&G’s proposal.

⁴¹ Tr. P. __, l. __, Horii Direct p. 22, ll. 15-23.

along with its Quarterly Forecasts. Subsequent to the hearing, the South Carolina Energy Users Committee ("SCEUC") requested that the Commission's final order contain a provision requiring that SCE&G provide these reports. Specifically, SCEUC requested that the Commission's Order state,

SCE&G shall continue to provide parties with quarterly forecasts beginning with the quarter ending June 30, 2018 of the expected fuel factors to be set at SCE&G's next annual fuel proceeding and SCE&G's historical over (under)-collected balance to date. SCE&G will put forth reasonable efforts to forecast the expected fuel factors to be set at its next annual fuel proceeding, provided however, the quarterly forecasts will not be admitted into evidence in any future SCE&G proceeding.

ORS did not object to SCEUC's request. Because SCE&G specifically acquiesced to SCEUC's request and no party objects, the Commission should include that language in its final order.

Conclusion

Commission Order No. 2018-322(A) erred when it approved the Company's avoided capacity cost and inappropriately shifted the burden away from the Company when the utility's proposition was challenged and required ORS to provide an alternative. The evidence presented during the hearing and through pre-filed testimony does not support the Commission's Order with regards to the Company's avoided capacity cost. For the reasons state herein, ORS respectfully requests that the Commission reconsider its ruling in Order No. 2018-322 and find Mr. Horii's

recommendation to be the prudent manner in determining SCE&G's avoided capacity cost and require SCE&G to file abovementioned monthly and quarterly reports.

Dated this 11th day of May, 2018.



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